



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/155017

PRELIMINARY RECITALS

Pursuant to a petition filed January 23, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 25, 2014, at Milwaukee, Wisconsin.

The issue remaining for the determination is whether this appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest the discontinuance of her BadgerCare+ eligibility was effective November 1, 2013. A Notice of Decision dated October 1, 2013 was sent to Petitioner at the above\ address that informed her that her BadgerCare+ eligibility would end November 1,

2013 for failing to verify income and because of income in excess of income limits. It was sent to Petitioner at the above address and contained appeal instructions noting the appeal deadline to be December 17, 2013.

3. This appeal was filed with the Division of Hearings and Appeals on January 23, 2014.
4. Written requests for verification were sent to Petitioner at the above address on August 23, 2013, September 4, 2014 and September 20, 2013. All were sent to the above address.
5. A notice of premium, dated July 30, 2013, was sent to Petitioner at the above address.

DISCUSSION

The agency maintains that this appeal was not timely filed.

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medicaid matters must be filed within 45 days of the effective date of the agency decision. §49.45(5)(a), *Wis. Stats.*

Here Petitioner contends that she had not received any of the notices referred to in the Findings though she does not note other mail issues. Thus she reasons that the Division of Hearings and Appeals should find the appeal to be timely.

The agency is correct – this appeal is not timely. Further, the Division of Hearings and Appeals has no authority to expand appeal time limits.

CONCLUSIONS OF LAW

That Petitioner's appeal was not timely filed thus the Division of Hearings and Appeals has no legal authority to make a decision on the merits of the November 1, 2013 BC+ discontinuance.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of April, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on April 9, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability